



**STANDARD TERMS AND CONDITIONS
FOR PRODUCTS AND SERVICES**

1. Definitions & Interpretations

1.1 In these Terms and Conditions, unless the context clearly indicated a contrary intention, the words herein below shall have the meanings assigned to them and cognate expressions shall bear corresponding meanings:

1.1.1 "**Authority**" means any duly constituted legal or administrative person, who exercises jurisdiction or has Authority within any nation, state, municipality, port, or airport.

1.1.2 "**Company**" refers to Acacia Composites Manufacturers (Pty) Ltd, or the member of the group in respect of which it exercises its rights.

1.1.3 "**Customer(s)**" refers to any person at whose request or on whose behalf the Company undertakes any business or provides any Product or Service.

1.1.4 "**Product(s)**" refers to the whole of any part of any Product handled, transported, or dealt with by or on behalf of the Company or which come under the control of the Company or its agents, employees or nominees on the instructions of the Customer.

1.1.5 "**Group**" refers to the Company and any company which is a holding company or subsidiary of the Company from time to time which may render a service to the Customer.

1.1.6 "**Owner**" means the owner of the Product to which any business concluded under these Terms and Conditions relates and any other person who is or may have or acquire any interest, financial or otherwise, therein.

1.1.7 "**Services**" means the whole or any part of any physical, management, agency and/or business process services and/or activities of whatsoever nature undertaken by the Company in respect of the Customer and/or in relation to Products, performed by or on behalf of the Company.

1.1.8 "**Terms and Conditions**" means these Terms and Conditions as may be amended from time to time, without any notice to the Customer, in accordance with the terms hereof.

1.2 Reference to a statutory provision includes regulations and any subordinate legislation made from time to time under that provision, and includes that provision as modified or re-enacted from time to time.

1.3 Words importing the masculine gender shall include the feminine and neuter gender and vice versa; the singular shall include the plural and vice versa; natural persons shall include juristic persons and vice versa.

1.4 If a definition imposes substantive rights and obligations, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.

1.5 Where any word is defined within the context of any particular clause, that word, unless it is clear from the clause in question that that word has limited application only to the relevant clause, shall bear the meaning ascribed

to it for all purposes, notwithstanding that that word has not been defined in clause 1.

1.6 Clause headings are inserted for convenience only and shall not be used for interpretation.

1.7 The use of the word including and/or include(s) followed by a specific example(s) shall not be construed as limiting the meaning of the general wording preceding it.

1.8 Where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which event the last day shall be the next succeeding business day.

1.9 The contra proferentem rule shall not be applied in the interpretation of this document.

2. Application, Instructions & Representations

2.1 All and any business undertaken or advice, information or services provided by the Company, whether gratuitous or not, is undertaken or provided on the basis of these Terms and Conditions.

2.2 If the Company and the Customer have signed a specially negotiated agreement, these Terms and Conditions shall continue to apply, but such negotiated agreement shall be paramount and prevail in so far as its terms are inconsistent with these Terms and Conditions.

2.3 The Company may, at its election, perform and/or undertake any business either by itself or it may procure that a member of the Group undertakes such business as principal and subject to the Terms and Conditions contained herein, which shall apply *mutatis mutandis* to the Customer.

2.4 Unless otherwise agreed in writing, the Company, when acting as agent for and on behalf of the Customer, shall be entitled to enter into any contract it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions.

2.5 The Customer's instructions to the Company shall be precise, clear and comprehensive, and shall be recognised by the Company as valid only if timeously given, specifically in relation to a particular matter in question. Oral instructions, standing or general instructions or instructions given late, even if received by the Company without comment, shall not in any way be binding upon the Company, but the Company may act thereupon in the exercise of its absolute discretion.

2.6 In the absence of specific instructions given timeously in writing by the Customer to the Company, the Company shall:

2.6.1 in its reasonable discretion decide at what time to perform any or all of the acts which may be necessary or requisite for the discharge of its obligations to the Customer.

2.6.2 have an absolute discretion to determine the procedure to be followed by it in performing all or any of the acts or services it has agreed to perform.

2.6.3 make any declaration for the purpose of any statute, convention, or contract, as to the nature or value of the Products and Services.



2.7 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own employees performing part or all of the relevant services, or by the Company employing, or to third parties. Where the Company employs third parties, the Customer agrees that the Company shall have no responsibility for any act or omission of such third party.

3. Performance & Delivery

3.1 The Company will provide the Products and Services with a reasonable degree of care, skill, and judgment. Unless otherwise agreed in writing, the Company does not undertake that the Products shall depart, arrive, or be available on particular dates or take a particular route. Declarations of acceptance on all orders must be confirmed by the Customer in writing or by e-mail in order to be legally effective.

3.2 The Company shall be entitled, but be under no obligation, to depart from the Customer's instructions in any respect if in the reasonable opinion of the Company there is good reason to do so in the Customer's interest.

3.3 The technical documents supplied by the Company must be handed over to the Customer, and the agreed terms of payment and other obligations must be complied with by the Customer.

3.4 Drawings, illustrations, dimensions, weights or other performance data shall only be binding if this is expressly agreed or confirmed in writing. Samples and specimens are non-binding framework data.

3.5 If the Company has to deliver according to drawings, models, samples or using parts provided by the Customer, the Customer shall be responsible for ensuring that the industrial property rights of third parties are not infringed thereby. The Customer hereby indemnifies the Company against claims of third parties and will pay compensation for any damage incurred.

3.6 The Company's employees are not authorised to make verbal subsidiary agreements or to give verbal assurances that go beyond the content of the written contract, and the Company shall not be held liable therefore. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for or on behalf of the Company, whether negligently or otherwise unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of a director of the Company, in response to a written enquiry specifying accurately and in complete detail what information is required.

3.7 Delivery dates or periods, which may be agreed as binding or non-binding, must be in writing. Unless otherwise agreed, the delivery and performance periods shall not commence until the date of the order confirmation, but not

before all technical and commercial requirements have been clarified and confirmed.

3.8 The Company shall not be responsible for delays in delivery and performance due to *force majeure* and/or due to events which make delivery or performance considerably more difficult or impossible. This includes, in particular, strikes, lockouts, official orders, changes in the law, shortage of material or energy, or incorrect or untimely delivery, which cannot be prevented even with the application of due care and reasonable effort. They entitle the Company to postpone the delivery or service for the duration of the impediment plus a reasonable start-up time, or to withdraw from the contract in whole or in part due to the part not yet fulfilled. The Company shall however be entitled to make partial deliveries and render partial services at any time, unless the partial delivery or partial service is of no interest to the Customer.

3.9 If the impediment lasts longer than three months, the Customer shall be entitled, after setting a reasonable grace period, to withdraw from the contract with respect to the part not yet fulfilled. If the delivery time is extended or if the Company is released from its obligation, the Customer may not derive any claims for damages from this.

3.10 The Customer hereby acknowledges and agrees that the Company may at any time comply or cooperate with the orders or recommendations given by any Authority, including as to the disposition or surrender of any Products and Services and/or provision of information about the Products and Services. The responsibility of the Company in respect of the Products and Services shall cease on the completion of services or delivery or other disposition of the Products in accordance with such orders, recommendations, or cooperation.

4. Retention of Title

4.1 The Products shall remain the property of the Company up until full and final payment due in respect of such Products. Pledges or transfers of ownership by way of security are not permitted.

4.2 In the event of third-party access to the Products, in particular seizure, the Customer shall point out the Company's ownership and notify the Company immediately so that the Company can enforce its ownership rights. Insofar as the third-party is not in a position to reimburse the Company for the judicial or extrajudicial costs incurred in this connection, the Customer shall be liable for these costs as well as any other related costs.

4.3 In the event of any breach of contract on the part of the Customer - in particular default in payment - the Company shall be entitled to withdraw from the contract and to demand the return of the Products.

5. Prices & Payment

5.1 Unless otherwise stated, the Company shall be bound by the prices contained in its offers for 30 days from the date thereof. Otherwise, the prices stated in the Company's order confirmation plus the respective statutory value added tax shall be decisive.



- 5.2 Additional deliveries and services will be charged separately. This shall apply in particular to expenses incurred by the Company as a result of subsequent change requests by the Customer which deviate from the original order.
- 5.3 Payments shall be made within 10 days (unless otherwise agreed upon by the parties) of the invoice date without any deduction(s), and shall be made free of charge in favour of the Company. The Company reserves the right to deliver only against cash on delivery or prepayment.
- 5.4 Any payment received after the due date shall carry a surcharge of 10% per month from the date of late payment in addition to the invoice amount. The Customer hereby acknowledges that surcharge payment is fair and reasonable, and shall be payable immediately together with the late payment to the Company.
- 5.5 The Company shall be entitled to set off payments first against the Customer's older debts and shall inform the Customer of the nature of the set-off effected. If costs and interest have already been incurred, the Company shall be entitled to set off the payment first against the costs, then against the interest and finally against the main performance.
- 5.6 If the Company becomes aware of circumstances which call into question the creditworthiness of the Customer, the Company shall also be entitled to demand advance payments or the provision of security or collateral.
- 5.7 Any cash monies received by the Company at any point in time, the cash deposit fee calculated at 2% (two percent) of the cash amount received must be added and included in such cash monies.
- 5.8 If insolvency proceedings are instituted against the Customer's assets or out-of-court composition proceedings are applied for, the Company shall be entitled to withdraw from the contract for the non-fulfilled part.
- 6. Insurance**
- 6.1 Unless otherwise agreed in writing, the Company shall not be under any obligation to obtain insurance in respect of any of its Products and Services to the Customer.
- 6.2 If the Customer requests insurance on Products and Services, the Company may agree in writing to affect such insurance. This will lead to the formation of a separate contract of insurance between the Customer and insurer which is subject to the conditions and exceptions incorporated into such policy. Insofar as the Company agrees to affect such separate insurance, the Company acts solely as third-party/middle-man for the Customer.
- 6.3 Should any insurer dispute its liability in terms of any insurance policy, the Customer concerned shall have recourse against such insurer only and the Company shall not have any responsibility or liability whatsoever in relation thereto. Insofar as the Company agrees to arrange insurance, the Company acts solely as third-party/middle-man for and on behalf of the Customer.
- 7. Copyrights, Industrial Property Rights, and Design Changes**
- 7.1 The Company reserves all property rights and copyrights to drawings, samples and similar information. These may only be made accessible to third parties with the Company's prior consent.
- 7.2 The Company shall in any case claim the exclusive right to manufacture designs, drawings and tools produced by the Company. Passing on and copying of these documents as well as the tools, utilisation and communication of their contents are not permitted unless expressly granted. Any infringement shall result in the payment of damages.
- 7.3 The Customer warrants that the manufacture and delivery of items manufactured according to its specifications do not infringe the industrial property rights of third parties.
- 7.4 The Company reserves the right to make design changes at any time. However, the Company shall not be obliged to make such changes to products already delivered.
- 8. Breach & Disputes**
- 8.1 In any dispute between the Company and the Customer, the Company shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with any agreement between it and the Customer, until such time as the Customer proves the contrary. The Customer shall be entitled to compel performance by the Company of the obligations it has defaulted in, but shall not be entitled to cancel these Terms and Conditions and/or any agreement between the Customer and the Company.
- 8.2 Should there be any dispute of any nature whatsoever between the parties in regard to any aspect, matter or thing relating to these Terms and Conditions and whether or not the Company has executed its obligations in terms of any agreement it has with the Customer, then and in such event the Customer shall nevertheless be obliged to perform its obligations in terms of any such agreement as though the Company had performed properly and to the Customer's satisfaction.
- 8.3 The Customer's remedy shall be limited to an action against the Company for repayment of either the whole or a portion of the amount which the Customer alleges constitutes an overpayment.
- 8.4 The Customer shall not be entitled to withhold payment of any amounts, by reason of any dispute with the Company, whether in relation to the Company's performance in terms of any agreement, or lack of performance or otherwise, after which payment the Customer's rights of action against the Company in terms of this clause can be enforced. Until such payment is made, any rights that the Customer may have, shall be deemed not yet to have arisen and it is only the payment to the Company which releases such rights and makes them available to the Customer in respect of any claim that it may have against the Company.
- 8.5 In the event of a dispute arising between the parties which cannot be resolved, it shall in the first instance be referred to Director(s) of the Customer and the Directors(s) of the Company for resolution.

Acacia Composites Manufacturers (Pty) Ltd

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Acacia
Composites

Bush to Bio Composites

- 8.6 Should the aforementioned parties not be able to resolve the dispute within 10 days after the dispute has been referred to them, then such dispute shall be referred to an arbitrator agreed upon between the parties.
- 8.7 Should the parties fail to agree upon an arbitrator within 10 (ten) days, then either of them shall be entitled to apply to the President, for the time being, of the Law Society of Namibia to nominate an arbitrator.
- 8.8 The arbitrator shall determine the proceedings to be followed and other requirements of the arbitration. In all respects the arbitrator's decisions shall be final and binding on the parties and may include an order as to costs.
- 9. Governing Law & Jurisdiction**
- 9.1 These Terms and Conditions and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of Namibia.
- 9.2 If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with any common law or legislative enactment ("the law") of any nature whatsoever, then the Company by complying therewith shall not be deemed to waive nor abandon any of its rights in terms of these Terms and Conditions. In addition, thereto, in complying with the law, the Company shall not be deemed to have assumed any onus, obligation, responsibility or liability in favour of the Customer.
- 9.3 If any of the Terms and Conditions are repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these trading terms and conditions.
- 9.4 The parties agree that any legal action or proceedings arising out of or in connection with these trading terms and conditions shall be brought in any competent court having jurisdiction within Namibia.
- 9.5 The Company assumes no liability to Customer, or any other person, for any loss or expense including, but not limited to, fines and penalties due to Customer's failure to comply with any applicable laws, rules, regulations, licenses or permits.
- 10. Waiver & Severability**
- 10.1 No extension of time or waiver or relaxation of any of the Terms and Conditions shall operate as an estoppel against any party in respect of its rights under these Terms and Conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these Terms and Conditions.
- 10.2 No variation of these Terms and Conditions shall be binding on the Company, unless embodied in a written document signed by a duly authorised representative of the Company.
- 10.3 Any purported variation or alteration of these Terms and Conditions other than as set out above, shall not be of any force and effect, whether such purported variation or alteration is written or oral, or takes place before or after receipt of these Terms and Conditions by the Customer.
- 10.4 If any provision of these Terms and Conditions is unenforceable, then the Company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions which shall not be affected and shall be of full force and effect.

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